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June 16, 2003

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TWB-204  
Washington, D.C. 20554

**Re:** WC Docket No. 02-1 12, Extension of Section 272 Obligations of Southwestern Bell Telephone Company in the State of Texas

**Notice of Ex-Parte Communication**

Dear Ms. Dortch:

On Friday, June 9, 2003, Brett Kissel, Jackie Flemming, Gary Phillips, and Anu Seam of SBC Communications Inc. participated in a conference call with William Dever, Christine Newcomb and Pamela Megna of the Wireline Competition Bureau's Competitive Policy Division. The purpose of the call was to address the AT&T petition and *exparte* of May 29, 2003, in the above-referenced proceeding. The attached document summarizes the discussions.

In accordance with section 1.1206 of the Commission's rules, this letter is being filed in the above-referenced proceeding via the Commission's ECFS system. Should you have any questions regarding the attached, please do not hesitate to contact me by whatever means are most convenient for you.

Sincerely,

A handwritten signature in black ink that reads 'Jacquelyne Flemming'. The signature is written in a cursive, flowing style with a large initial 'J'.

Attachment

## Summary of Discussion

**Introduction:** Although a lack of market power in the relevant markets necessarily means that structural separation requirements are unnecessary, the presence of market power does not, conversely, indicate that structural separation requirements are necessary. To the contrary, the Commission has long recognized that structural separation is a costly, burdensome, and intrusive way of preventing discrimination and cross-subsidization, and it has lifted structural separation requirements even in the presence of undisputed market power. AT&T's attempt to distract the Commission into market share or market power inquiries is nothing more than a ploy to avoid the real issue, which is whether structural separation requirements are *necessary and appropriate*. That being said, SBC takes this opportunity to correct the record with respect to its market share in Texas.

### I. **Competition Numbers**

A. **From the FCC's Local Competition Report:** As explained in both the *UNE Fact Report*, Appendix A, filed April 2002, and the *UNE Rebuttal Report*, filed October 2002, in the *Triennial Review Proceeding*, SBC believes that the FCC's *Local Competition Report* significantly understates the number of lines CLECs serve with their own facilities. Nevertheless, the *Local Competition Report* disposes of AT&T's claim that competitive circumstances in Texas are different from those in New York.

#### i) **From Table 10 of the report:**

- (a) CLEC owned access lines in NY: 441,461 (3.4% of total access lines in the state)
- (b) CLEC owned access lines in TX: 426,168 (3.3% of total access lines in the state)

#### ii) **From Table 12 of the report**

- (a) Number of CLECs reporting in NY: 21
- (b) Number of CLECs reporting in TX: 29

(As with estimates of facilities-based lines, these numbers are low. In fact, 340 CLECs are certified in Texas, 180 of which are actively passing orders to SBC.)

#### iii) **From Table 13 of the report:**

- (a) Wireless subscribers in NY: 8,898,347
- (b) Wireless subscribers in TX: 9,943,429

#### iv) **From Page 3 of the report:** The largest number of CLEC lines are in NY, followed by CA and TX.

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### **B. Estimate of CLEC Lines and Market Share Using Interconnection Trunk Ratio methodology (2.75:1 access lines to trunk ratio) for Calculating Facilities-Based Competition**

- i) Total SBC access lines in TX: 8,006,600
- ii) Total CLEC access lines in TX: 3,484,263
- iii) Percent CLEC Market Share: 30.3%
  - (a) Further breakdown:
    - (1) Pure facility-based access lines – 1,672,132 (14.6%)
    - (2) UNE-L access lines – 196,350 (1.71%)
    - (3) UNP-P access – 1,480,903 (12.9%)
    - (4) Resale access lines – 134,878 (1.2%)

C. **E911 Methodology:** As explained in the *UNE Rebuttal Report*, E911 databases provide a very conservative measure of CLEC lines even when data from all of the various E911 databases are available. That is because if business service is provided via multi-line hunting arrangements that associate multiple lines with a single translated telephone number, the E911 database typically will not reflect the many lines associated with that number. In the case of Texas, however, E911 listings are of even less utility in estimating CLEC lines because SBC does not operate the E911 database in two of the largest metropolitan areas of the state, Austin and Houston. SBC nevertheless sets forth below E911 data for the areas in Texas where such data are available, and will attempt to estimate the Houston and Austin numbers and provide an update to the FCC staff. Using the available E911 data for March 2003, the numbers break down as follows:

- i) Total SBC access lines: 8,006,600
- ii) Total CLEC access lines: 2,287,823
- iii) Percent CLEC access lines 22.2%
  - (a) Further breakdown:
    - (1) Pure facility-based CLEC access lines – 475,692 (4.6% of total access lines)
    - (2) UNE-L access lines – 196,350 (1.9%)
    - (3) UNE-P access lines – 1,480,903 (14.4%)
    - (4) Resale – 134,878 (1.3%)

### **II. Performance measures associated with the Texas T2A interconnection**

**agreement:** The T2A will expire in October 2003. SBC has offered to extend the T2A until October 2004 with certain conditions, while a successor agreement is negotiated and/or arbitrated. This offer is currently before the Texas PUC. At the same time, SBC is in the process of negotiating the terms of a successor agreement,

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including terms relating to performance measures. If no agreement is reached, CLECs may ask the Texas Commission to arbitrate the matter.

**Discrimination Claims:** The Commission should dismiss the claims of local competition discrimination raised by AT&T and the Texas PUC and focus on the Commission's own review of SBC's compliance in SWBT, including Texas, through the Enforcement Bureau's (EB) Section 271 Compliance Review Program. Although SBC